

### **REMARKS/ARGUMENTS**

The rejections presented in the Office Action dated May 12, 2008, (hereinafter Office Action) have been considered. Reconsideration of the pending claims and allowance of the application in view of the present response is respectfully requested.

With respect to the objection to Claim 11, the claim has been rewritten in independent form in accordance with the Examiner's suggestions. Thus, the objection is believed to be overcome, and Applicant requests that the objection be removed.

With respect to the objection to Claim 12, the claim has been canceled rendering the objection moot. Applicant accordingly requests that the objection be removed.

Without acquiescing to characterizations of the asserted art, Applicant's claimed subject matter, or to the applications of the asserted art or combinations thereof to Applicant's claimed subject matter and in an effort to facilitate prosecution, Applicant has amended each of the independent claims to indicate that the context data is a music signal that is analyzed to generate game control data. Support for these changes may be found in the instant Specification, for example, in Figs. 2-6 and the corresponding discussion thereof at page 12, line 18 through page 15, line 3; therefore, the changes do not introduce new matter. The pending claims are believed to be patentable over the asserted references for the reasons set forth below.

None of the properly asserted references has been shown to teach or suggest receiving or using context data as a music signal, as now claimed in each of the independent claims. For example, the Office Action acknowledges at page six that the primary reference (U.S. Patent No. 5,001,632 to Hall-Tipping, hereinafter "Hall-Tipping") does not disclose that context data comprises music data. Therefore, the rejections based on the teachings of Hall-Tipping would be improper for failing to provide correspondence to each of the claimed limitations. Applicant accordingly requests that the §§ 102(e) and 103(a) rejections based upon the teachings of Hall-Tipping be withdrawn.

In addition, Applicant respectfully traverses the § 103(a) rejection of Claims 6, 7, 14, 19, and 20 which is based on the teachings of U.S. Publication No. 2007/0155494 by Wells *et al.* (hereinafter "Wells") because Wells is not a prior art reference with respect to the instant

application. The cover page of Wells indicates that the cited publication is a continuation application of a previous application filed on August 25, 2004. However, the present application is a § 371 application based on an international application filed on September 24, 2003, and in accordance with 35 U.S.C. § 363 and MPEP § 1893.03(b), the filing date of the international application is the filing date of the present application. Since the priority filing date of Wells is subsequent to the filing date of the present application, Wells is not “prior” art with respect to the instant application. It is also noted that the cover page of Wells does not identify any further priority claims; therefore, the asserted Wells reference is not entitled to any other claims of priority (MPEP § 201.11(II)(A)). Since Wells is not “prior” art to the instant application, the rejection based upon Wells is improper, and Applicant accordingly requests that the rejection be withdrawn.

With respect to the rejection of dependent Claims 22 and 23, the further reliance on the teachings of U.S. Publication No. 2002/0016203 by Nagata *et al.* (hereinafter Nagata”) does not overcome the above-discussed deficiencies in the teachings of Hall-Tipping. For example, Nagata has not been shown to teach executing an electronic game according to game control data generated based on context data. Since Nagata fails to teach or suggest these claim limitations, any combination of the teachings of Nagata with those of Hall-Tipping must also fail to teach such limitations. Thus, the § 103(a) rejection of dependent Claims 22 and 23 should also not be maintained. Applicant accordingly requests that the rejection be withdrawn.

It should be noted that Applicant does not acquiesce to the Examiner’s statements or conclusions concerning what would have been obvious to one of ordinary skill in the art, obvious design choices, inherent, non-functional limitations, intended use, common knowledge at the time of Applicant’s invention, officially noticed facts, and the like. Applicant reserves the right to address in detail the Examiner’s characterizations, conclusions, and rejections in future prosecution.

With particular respect to Claims 9 and 10, Applicant notes that these claims are not included in any of the statements of rejection. MPEP § 707.07(d) indicates that where a claim is refused the word “reject” must be used and the statutory basis for any ground of rejection should be designated by an express reference in the opening sentence of each ground of rejection. While it appears that the Examiner intended to reject Claims 9 and 10 upon the same

basis of the rejection of Claims 1-5, 11-13, 15, 16, 18 and 21, such a rejection would be improper for the reasons discussed above in connection with the failure of the asserted reference to correspond to the claimed invention. If this was not the Examiner's intention, Applicant requests clarification, an opportunity to respond, and that any future rejections comply with MPEP § 707.07(d).

Authorization is given to charge Deposit Account No. 50-3581 (NKO.063.WUS) any necessary fees for this filing. If the Examiner believes it necessary or helpful, the Examiner is invited to contact the undersigned attorney to discuss any issues related to this case.

Respectfully submitted,

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